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THE

Merits of the Election

Between the

Honourable CRAVEN HOWARD, Eſq; Petitioner,

AND

Mr. EDWARD PAUNCEFORT, one of the Sitting Members for the Borough of *Malmsbury*.

THIS Agreed on both ſides, That the Right of Election is in an *Alderman, and Twelve Capital Burgeſſes*, upon whom Cuſtom has devolved the Right of the reſt of the *Burgeſſes*; That One of the Electors was abſent; That Six, without the *Alderman*, Voted for Mr. *Howard*; Six (of which the *Alderman* was one) for Mr. *Pauncefort*.

Votes for Mr. *Howard*.	For Mr. *Pauncefort*.
Nicholas Hays,	* *Edward Brown*,
James Crome,	*Edward Fry*,
Giles Kaines,	* *John Adey*,
Edmond Sanſome,	*William Hill*,
Abraham Huggin's,	* *Robert Nicholls*,
Elias Ferris.	*Richard Dolman*, Alderman.

No manner of Objection has been made againſt any one of Mr. *Howard*'s Votes, or the leaſt Pretence, that he or any *Agent* for him, gave any Treat, or Promiſe, or uſed any indirect Means whatſoever: And indeed, his Intereſt was ſo eſtabliſh'd, as next Heir to the *Honour* and *Eſtate* of the *Earl* of *Berks*, who has long been a Neighbour and Benefactor to the Town, and by the Services which Mr. *Howard* had done them, while their *Repreſentative in Parliament*, and otherwiſe; that 'twould have been the greateſt Imprudence imaginable, for him to uſe ſuch Methods as would be neceſſary for (*a*) one wholly a Stranger, who knew that the Election was (*b*) ſet to ſale to the higheſt Bidder; and, as (*c*) appears by the Cenſure of the *Houſe of Commons*, was not unacquainted with the way of Bribing.

(*a*) Proved by Alderm. *Hays*, and even by Mr. *Eſcourt*, produced as a Witneſs for Mr. *Pauncefort*.

(*b*) Offer'd to be Prov'd by Col. *Mordant* and Mr. *Pennington*.

(*c*) *Vo'es, Sabbati* 16 *Feb.* 1694. *Reſolved, Nemine Contradicente*. That Mr. *Edward Pauncefort* (for contriving to Cheat Colonel *Haſtings*'s Regiment of Five Hundred Guinea's, and for giving a Bribe to obtain the King's Bounty) be taken into the Cuſtody of the Sergeant at Arms, attending this Houſe. *Vid.* the *Vote* 21 *Feb.* 1694. That he had not dealt Ingenuouſly, but had Prevaricated.

The Numbers upon the Poll being equal, it is ſubmitted to the Judgment of the *Houſe*, Whether any pretence of Cuſtom in that Town, can warrant the Principal Officer's Acting as Two Men, in Returns to Parliament; and, Whether the way of Voting for Members, ought not to be Govern'd by the *Cuſtom of Parliament*, where the *Speaker* or *Chairman* gives

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gives no Vote to defeat any Reſolution; but when they are equal, adds his Vote to turn the Scale.

Therefore Mr. *Howard* having the Majority without the *Alderman* (as 'tis conceived) ought to have been Return'd, to prevent the neceſſity of repeating of new Elections. Beſides, *Thirteen* being the Number of the *Electors*, for the Chief Officer to ſupply the Room of one abſent *, ſeems contrary to the nature of the Conſtitution: For by the ſame reaſon, if that Man were preſent, Six, of which the *Alderman* were one, would defeat the Election of t'other Seven.

* *John Turner*, one of the Burgeſſes, near 90, was convey'd away.

'Tis to be obſerved, That the * *Old Man* who ſaid it, had been twice ſo, upon Returns to Parliament, could name neither Times nor Perſons, and ſaid the Numbers both times were but Four and Four; which is very improbable, nor did he pretend that the *Houſe of Commons* had made any Determination thereupon.

* viz. *Abraham Huggins.*

However, 'tis humbly conceiv'd, that Mr. *Howard* has Prov'd enough to diſable Three of Mr. *Pauncefort*'s Votes.

Robert Nicholls diſabled for not Receiving the Sacrament. The Witneſs, *Joſeph Hancock.*

I. *Robert Nicholls* was Prov'd to be an *Anabaptiſt*, being ſo reputed, and going to their Meetings; and if Evidence of his own Confeſſion would have been receiv'd, 'twould have been Prov'd that he declar'd he neither had Received the Sacrament according to the *Church of England*, nor would upon any account. The Councel on the other Side, admitted, That ſince he had no Vote but as *Capital Burgeſs*, the not having Receiv'd the Sacrament, by the Statute of 13 *Car.* 2. would be a Diſability; but would not admit the Proof which was offered, ſufficient to put them upon ſhewing that he had not Receiv'd it; though they could not but know, That in ſuch Caſes, the Law, as 'tis taken in *Weſtminſter-Hall*, puts the Proof upon the Party accuſed; as was held in the Caſe of *Slatford* and *Thurſton*, upon an Action for falſely Returning, That the Party had not taken the Sacrament, to qualifie him to be an Officer in the Corporation.

13 *Car.* 2. Stat. 2. c. 1.

B. C. *Oxon. Michaelmas*, 1697.

Edward Brown diſabled, being Bribed by *William Adey*, Agent for Mr. *Pauncefort*, Prov'd by *Ed. Brown*, Jun.

Anthony Martin call'd as a Witneſs for t'other Side.

And the Affidavit of *Edw. Brown*, Sen. of which *Walter White*, Eſq; a Member of the *Houſe*, can give an Account.

* *Note*, Mr. *Howard* knew nothing of the Bond till 'twas delivered up.

II. Mr. *Howard* was deprived of the Teſtimonies of *Edward Brown*, Senior, and Four more who join'd (in a Bond, ſince Cancell'd, without any Money Paid or Promis'd) Condition'd to Indempnifie him for giving Evidence of his being Brib'd, by *William Adey*, Deputy-Steward or Town-Clerk, to Vote for ſuch as he ſhould Name, with a Promiſe confirm'd by Mr. *Pauncefort* himſelf, to advance 60 *l.* for Paying off a Mortgage upon his Eſtate; and afterwards receiving Three Guineas of *William Adey* in part of Payment for his Vote. However *Anthony Martin*, produced on the other Side to prove the * Bond, gave Evidence that the Diſcovery was made by *Brown*, and at his Requeſt put into Writing by *Martin*, before any Bond was given. And 'tis referred to Mr. *White*, a Member of the Houſe, to give an Account of *Brown*'s Affidavit taken before him; wherein he confeſieth the ſaid Bribery. It alſo appears, That he was Treated by *John Adey*, for ſuch Perſons as *John would Chuſe* for Parliament Men. Beſides which, *Brown*'s Son declared, That he knew his Father had Money; That he ſhewed him *Three Guineas* at one time, and *Three* at another, which he ſaid *William Adey* gave him for his Vote; and that within two or three Days after his Father had diſcover'd the Bribery, and had withdrawn, for fear of Trouble upon that Account, *William Adey* gave *Edward Brown*, Junior, Two Guineas, and then One more, to Endeavour to bring back his Father; declaring he had given him Money for his Vote: And if the Son could not find him, the Father would make the Election Void.

III. *John*

III. *John Adey*, another of the Voters for Mr. *Pauncefort*, was proved more than once to have ordered *John Woodman*, to diſtribute Syder and Beer, to the value of Nine Pounds, to himſelf and the reſt of the *Electors*; for which he declared, ſuch Parliament Men as he would Chuſe ſhould Pay; of which *William Adey* promis'd Payment: And afterwards ask'd for *Woodman*'s Bill, and tender'd him Five Guineas, which he would not take, not being his full Due.

John Adey diſabled as an Agent for Mr. *Pauncefort*, beſpeaking Treats, and being himſelf Treated for his Vote.

Note, He being produced as a Witneſs for Mr. *Pauncefort*, one of the Councel would have given him up, becauſe of this Objection; but was check'd by the other, as therein yielding the Cauſe.

The Anſwer to this was, That the Treats were for all the Burgeſſes, and not in order to the Election: But it appears by *John Adey*'s Declaration, that at leaſt he himſelf took the Treats for that end, placing them to the Account of *ſuch as he would Chuſe*; And Mr. *Pauncefort*'s Agent, *William Adey*, confirm'd the ſame, promiſing to Pay, and offering Five Guineas for thoſe Treats.

That *William Adey* was an Agent for Mr. *Pauncefort*, appears not only by this Inſtance, but further,

1. By his preſſing *Brown* the Burgeſs, to Vote for ſuch as he ſhould Name.

Adey's procuring Votes for ſuch as he ſhould Name.

2. By his Adjourning the Poll from the Market-Croſs, to a Private Room in a Tavern, for the convenience of his giving Signs whom he would have Choſen; and making a particular Sign to *the Electors*, whoſe Eyes were upon him, at the Naming Mr. *Pauncefort*; of which *Richard Pye*, Eſq; *a Member* of the Houſe, may pleaſe to inform the Houſe.

His Contrivance to let the Electors know for whom he Brib'd them, Prov'd by Mr. *Pye*.

3. *William Adey*'s giving Money to *Brown*'s Son, to prevent his Father's Diſcovery, *leſt it ſhould void Mr.* Pauncefort's *Election*; and going with Mr. *Pauncefort* to Alderman *Hays*, where Mr. *Pauncefort* Treated his own Voters, and two of Mr. *Howard*'s, to procure Subſcriptions, That he had given no Bribes: And *William Adey* paid 20 *s.* to Mr. *Hays*, towards what was drunk at his Houſe upon that Account.

His Giving and Paying Money for Mr. *Pauncefort*.

Much more would have appear'd againſt *William Adey*, if Colonel *Mordant*, and Mr. *Pennington* might have been admitted to prove his ſetting the Election to Sale, before he had been proved *Agent* for Mr. *Pauncefort*; and if they (coming as Witneſſes for Sir *Thomas Skipwith*) had not gone away, upon his being deprived of the Evidence of *Brown*, Senior, and the Four who had been Bound to Indempnifie him for his Diſcovery.

Upon the whole, if 'twere admitted that the *Alderman* might give two Votes for Mr. *Pauncefort*; yet, as 'tis conceived, Mr. *Howard* has two good Votes more than Mr. *Pauncefort*; three, if the Alderman has but a Single Vote; and four, if he ought not to Vote contrary to the Practice in *Parliament*, and the Nature of the Conſtitution of that *Borough*, which has an odd Number of *Electors*.

'Tis conceiv'd that Nichols *ſhall not be preſum'd, without Proof, to have Receiv'd the Sacrament contrary to his avow'd Principle; That the Votes of* Brown *and* John Adey, *procur'd by Bribes and Treats, are wholly Void; And that Mr.* Howard *was duely Choſen by the* Majority *of Perſons qualified to Chuſe.*

CASE

Of the Honourable

CRAVEN HOWARD, Esq;

Against

Mr. EDWARD PAUNCEFORT,

Touching the Election of *Malmsbury*.

Appointed to be Reported on Monday, *the* 27th. *Instant.*